



Commonwealth  
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*Office of Campaign and Political Finance*

*One Ashburton Place, Room 411*

*Boston, MA 02108*

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### *Advisory Opinion*

August 16, 1999

AO-99-14

Russell B. Higley, City Solicitor  
City of Cambridge  
795 Massachusetts Avenue  
Cambridge, MA 02139

Re: Use of City resources to provide local candidate Web access

Dear Mr. Higley:

This letter is in response to your August 3, 1999 letter asking for an advisory opinion regarding use of City of Cambridge (City) resources to comply with a City Council request to provide local candidates with access to the City's Web site.

The City Council's request, in essence, asks the City Manager to use City resources to:

- a. provide an internet Web link from the City's Web site to any site prepared by a certified candidate for municipal office in the November 2, 1999 election for City Council and School Committee;
- b. provide assistance to any such certified candidate to publish information on that person's candidacy;
- c. notify each certified candidate of the availability of links to the City's Web site by September 1, 1999; and
- d. publicize the availability of candidate information on the City's Web site through "newspapers, television and other media outlets" and at the Cambridge Public Library computer terminals.

The Council request asks that the area of the Web site designated for the link be a prominent area on the Web site and that the area be the only area on the Web site where a site prepared by or on behalf of a certified candidate would be linked.<sup>1</sup>

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<sup>1</sup> If all candidates are treated equally, there would seem to be no problem with limiting candidate links to this area of the City's Web page.

I understand that the purpose of the request is to increase voter participation and access to information regarding the candidates.

### **Question**

May the City provide the resources as outlined in the City Council request?

### **Answer**

- (a) The City **may** provide links from the City's web site if candidates provide the City with their Web addresses.
- (b) The City **may not** provide training on Web site development to candidates or political committees.
- (c) The City **may** notify each certified candidate of the availability of the links.
- (d) The City **may** publicize the links in a manner consistent with how it publicizes its Web site. In addition, as discussed below, it may publicize the links in other ways not requiring unusual or substantial expenditures.

### **Discussion**

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election.<sup>2</sup> The court stated that the campaign finance law demonstrates an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose." 376 Mass. at 193-195.

Accordingly, this office has concluded that governmental entities may not expend public resources or contribute anything of value to support or oppose a candidate, political committee or ballot question. See IB-91-01. "Public resources" include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and computers, as well the use of a state, county or municipal seal. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided.

Certain resources may be provided, however, if "*equal access*" is provided to other candidates. The court in Anderson stated that "the city's use of telephones and printed materials provided by public

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<sup>2</sup> In discussing Anderson in this opinion, we refer to the use of public resources by "municipalities," to affect candidate elections. Our analysis also applies, however, to the use of public resources by other state, county and local public entities. In addition, the analysis applies not only in the context of candidate elections, but also to the use of public resources to influence ballot questions.

funds, and its use of facilities paid for by public funds, would be improper, at least unless each side were given equal representation and access.” 376 Mass. at 200.<sup>3</sup>

In addition to considering whether equal access is provided, we should also consider the *purpose* of the expenditure. Providing resources involves the making of a “contribution” or “expenditure” subject to the campaign finance law only if made for the purpose of influencing an election, e.g., supporting or opposing candidates. See M.G.L. c. 55, § 1. If links to the City Web site are created *for the purpose of promoting voter participation* and all candidates have equal access to the links (even if all candidates do not actually create links), expenditures associated with the links would not be “expenditures” subject to the campaign finance law.

In some circumstances, however, *regardless of the existence of a legitimate purpose or equal access*, a municipality should not provide public resources to benefit candidates. In Anderson the court suggested that a municipality could provide certain limited resources to proponents and opponents of a ballot question. The court did not, however, consider whether a municipality could provide *services* to assist candidates or the extent to which public resources could be provided even if equally available to other candidates. The court emphasized that to comply with the campaign finance law municipalities must maintain a “hands off” approach to political fundraising and disbursing, and that such activities should be kept “out of city and town halls.” 376 Mass at 187 and 195. To ensure compliance with Anderson the extent to which municipalities become involved in supporting campaign efforts of candidates should be limited, particularly in the context of providing *services* to candidates (an issue not addressed in Anderson). Providing services raises different concerns than providing use of property such as a mailing list or a room; for example, it would be difficult to monitor the performance of an arrangement to provide services to ensure that all candidates are treated equally. In addition, the level of concern regarding the appearance of fairness would be magnified if the arrangement might involve a substantial expenditure of public resources.

Therefore, to avoid possible violation of the principles articulated in Anderson, municipalities should not enter into arrangements to provide services to candidates, particularly where the services that would be provided might enhance a candidate’s ability to raise funds.

Previous advisory opinions issued by this office relating to the use of the internet by municipalities are consistent with this standard. The office has stated that the City may provide links from the City’s homepage to homepages of members of incumbent City Councilors. See AO-96-04, in which the office stated:

The link would be consistent with the limitations specified in Anderson. Since (1) the creation of the link would not involve the use of public resources to support or oppose any councillor, (2) the minimal use of public resources to establish the link allows councillors to provide services

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<sup>3</sup> “Equal access” means that proponents and opponents who request and obtain space for a meeting or hearing must be provided space on the same terms and conditions. OCPF has applied the “equal access” exception to mailing (AO-88-27), rooms in a municipal building (AO-94-11) and space in a public park (AO-92-28).

to constituents, and (3) the disclaimer which will be used minimizes any potential appearance of impropriety.

The disclaimer referenced in AO-96-04 stated that the links were being provided as a public service, and that councillor's Web pages might contain partisan opinions which were the responsibility of the councillors and did not reflect any official position of the City. The City suggested that the link if deemed unfair to non-incumbent candidates, could be disconnected 60 days before municipal elections. The office recommended the cut-off be adopted and I understand that it was made part of the City's policy.

In addition, the office stated in AO-99-06 that a municipality may use its Web site to post information related to a school construction ballot question assuming the information does not refer to an election or otherwise appear to be intended to influence the election. In that opinion the office also stated that posting the information on a publicly funded school Web site, unlike mailing or e-mailing the information to voters, would not be inconsistent with Anderson. The office reasoned that posting the information on the town's Web site was similar to posting a resolution of a town board on a town hall bulletin board. See also AO-99-02 (prohibition on corporate contributions does not apply where newspaper provides *all* candidates with the opportunity, on the same terms, to have free Web site space on newspaper's Web site).

Like OCPF, the Federal Election Commission has recently considered the extent to which a public entity may provide links to candidates' Web pages. See FEC Advisory Opinion 1999-07, in which the FEC concluded that links could be provided by the Minnesota Secretary of State in a nonpartisan way to all candidates providing Web site addresses.

It follows from this analysis that item (a) -- the provision of the link, and item (c) -- the notification of candidates, could be provided by the City. These services would not be provided for the purpose of influencing an election, would be available equally to all candidates, would involve only minimal expenditure of public resources.<sup>4</sup>

The City should, however, adopt a policy which ensures that candidate links are created in a timely manner, i.e., within a certain time frame after receipt of a Web address from a candidate.

Item (b) asks the City to "provide assistance" to certified candidates. I assume that such "assistance" would involve training on how to develop a Web site. Several hours of training are generally required before a person can develop a Web site. As discussed above, providing this type of service would raise issues of compliance with the campaign finance law, as interpreted in Anderson.

Item (d) asks the City to publicize the availability of the candidate information through "newspapers, television and other media outlets" and the Cambridge Public Library computer terminals. The City may publicize the links the way it currently publicizes its Web site. No substantial expenditure

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<sup>4</sup> In addition, the definition of "contribution" excludes discounts that are available to other candidates for the same office and the general public. See M.G.L. c. 55, § 1. Although providing a link is something of value, the cost associated with providing the links would not be considered a contribution because the "discount" is available to all candidate for the same office.

would occur if the City were to publicize the availability of the information on its Web site or in the Public Library computer terminals. Similarly, the City could publicize availability through the local government access cable television channel and by sending a notice to the local newspapers, for the newspapers to publish at their discretion. The City should not, however, make extraordinary or unusual expenditures to advertise a notice.

Finally, the City should include a disclaimer on its Web site. The disclaimer might be similar to the disclaimer described in AO-96-04. The City might want to include a statement in the disclaimer that (1) the links to candidate sites are done in reliance on the addresses (URLs) provided by the candidates; (2) the links are displayed for voter information purposes and not to influence the nomination or election of any candidate; (3) candidate Web sites are not monitored or regulated by the City; and (4) Web sites are available to any certified candidate. There is no need, however, to disconnect the links prior to the election, as recommended in AO-96-04. The links suggested by the Council would be available to all candidates, not just incumbents. In addition, the purpose of the links, i.e., to increase voter participation, would be defeated if the links were disconnected before the election.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan" followed by a horizontal line.

Michael J. Sullivan  
Director